

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

IN RE: AMERICAN MEDICAL SYSTEMS, INC.  
PELVIC REPAIR SYSTEM PRODUCTS  
LIABILITY LITIGATION

MDL No. 2325

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*Joanne O'Toole v. American Medical Systems, Inc.*      2:14-cv-025540

MEMORANDUM OPINION AND ORDER

Pending is a Motion to Dismiss Plaintiff Joanne O'Toole's Complaint with Prejudice for Failure to Comply with Pre-Trial Order # 280 filed by defendant American Medical Systems, Inc. ("AMS") on July 15, 2019. [ECF No. 62]. AMS cites to plaintiff's failure to timely serve a Plaintiff Fact Sheet ("PFS") in violation of AMS Pretrial Order # 280. In response, plaintiff's counsel concedes that plaintiff has not completed a PFS, but asserts dismissal should be without prejudice. [ECF No. 64]. Plaintiffs also failed to respond to requests for admission or the motion to deem those requests for admission admitted, and the requests for admission were deemed admitted by order entered September 5, 2019. [ECF No. 68].<sup>1</sup>

The court finds, pursuant to Rules 16 and 37 of the Federal Rules of Civil Procedure and after weighing the factors identified in *Wilson v. Volkswagen of Am., Inc.*, 561 F.2d 494, 503-06 (4th Cir. 1977), that this case should be dismissed without prejudice for failure to provide a PFS in compliance with the court's previous order.

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<sup>1</sup> The court is aware of plaintiff's counsel's desire to withdraw as counsel. [ECF No. 61].

Therefore, the court **ORDERS** that the Motion to Dismiss filed by AMS [ECF No. 62] is **GRANTED in part** to the extent AMS seeks dismissal and **DENIED insofar as AMS seeks dismissal with prejudice.** The court **ORDERS** that the case is dismissed without prejudice and stricken from the court's docket.

The court **DIRECTS** the Clerk to send a copy of this order to counsel of record.

ENTER: September 30, 2019



JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE